Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES
April, 2002

CHARLES ANTHONY (TONY) SMITH), *Petitioner*,
v.
WISE COUNTY BAIL BOND BOARD, *Respondent*,

On Petition for a Writ of Certiorari to the
Second Court of Appeals
District of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTON BEFORE THE COURT

THE QUESTION BEFORE THE COURT IS THE CONSTITUTIONALITY OF RULE 19(c) OF THE WISE COUNTY BAIL BOND BOARD (ADOPTED FROM THE TEXAS OCCUPATION CODE §1704.053) THAT GOVERNS ONLY **35** OF THE **254** COUNTIES IN TEXAS - AS THEY RELATE TO:

1) **3** OTHER STATE LICENSING STATUTES;
2) WITHIN THE SAME STATE;
3) THAT REGULATE THE SAME SURETY BUSINESS;
4) WITH DIFFERENT CONSEQUENCES FOR A CRIMINAL CONVICTION

ALL **4** LICENSING SCHEMES, COLLECTIVELY, BUT INDEPENDANTLY WITH DIFFERENT CONSEQUENCES FOR A CRIMINAL CONVICTION, REGULATE THE SURETY BUSINESS, AND ALL SCHEMES HAVE THE **SAME REQUISITES OF A BAIL BOND** - IN ALL **254** COUNTIES.

THE PETITIONER HEREIN IS DISENFRANCHISED IN MOST OF THE MORE LUCRATIVE **35** BAIL BOND BOARD COUNTIES DUE TO THE UNCONSTITUTIONAL PROVISIONS OF §1704.153 T.O.C., WHICH WAS ADOPTED BY THE WISE COUNTY BAIL BOND BOARD,

(RULE 19(c), TO REGULATE EMPLOYEES (AGENTS).

THE STATE OF TEXAS DOES NOT HAVE A STATEWIDE UNIFORM LICENSING STATUTE, BUT RATHER **4** SEPARATE STATUTES WHICH ARE APPLICABLE:

1) TO DIFFERENT COUNTIES;

2) UNDER DIFFERENT LICENSING SCHEMES;

3)WITH DIFFERENT CONSEQUENCES FOR A CRIMINAL CONVICTION.

OF THE **4** SEPARATE LICENSING STATUTES IN THE STATE OF TEXAS THAT REGULATE BAIL BOND SURETIES, NONE OF THE STATUTES MAKE A REFERENCE TO THE OTHER **3.** THERE IS NO WRITTEN LEGISLATION, ANYWHERE, THAT DESCRIBES THAT **4** LICENSING SCHEMES EXIST - OR THE **NECESSITY** FOR EACH **DIFFERENT** SCHEME.

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IN THE SUPREME COURT OF THE UNITED STATES

April, 2002

CHARLES ANTHONY (TONY) SMITH, *Petitioner,*
v.
WISE COUNTY BAIL BOND BOARD, *Respondent,*
Civil action No. 2-00-318-CV
Second Court of Appeals District of Texas
Petition for Review Denied By Supreme Court of Texas
Petitioner's Motion for Rehearing Denied By Supreme Court of Texas

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND COURT OF APPEALS DISTRICT OF TEXAS

Charles Anthony (Tony) Smith respectfully petitions for a Writ of Certiorari to review the Judgment of the Second Court of Appeals, District of Texas.

OPINIONS BELOW

The Opinion of the Second Court of Appeals, District of Texas was not published.

JURISDICTION

The Second Court of Appeals District of Texas entered it's judgment on July 12,2001.The Texas Supreme Court denied Petitioner's Petition for Review on October 25, 2001, and denied Petitioner's Motion for Rehearing on January 24,2002. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 & 1257(a)

CONSTITUTIONAL VIOLATION INVOLVED

ARTICLE XIV. Section 1....nor shall any State deprive any person of life, liberty, or property, without Due Process of law; nor deny to any person within its jurisdiction the **Equal Protection** of the laws.

STATEMENT OF THE CASE

THE STATE OF TEXAS DOES NOT HAVE A STANDARD STATE LICENSING ACT FOR BAIL BOND SURITIES OR THEIR AGENTS

A. Standard-less Licensing Statutes among 4 separate licensing schemes regulating Bail Bond Sureties in 254 Counties in the State of Texas and no standard at all for employees or agents under any of the 4 licensing schemes.

This case involves the standard-less construction of 4 separate licensing schemes in the State of Texas regulating bail bond sureties. Of the 254 Counties, only 35 counties are (unconstitutionally) regulated under the Texas Occupation Code 1704, which is more restrictive than the 3 other State licensing schemes regulating the other 229 counties. Simply stated there is no standard licensing statute regulating all

sureties, or their employees, in the State of Texas in violation of Equal Protection under the Fourteenth Amendment. See ***GEORGE W. BUSH***, *ET AL.*, petitioners v. ***ALBERT GORE, JR.***, *ET AL.* (*Bush v, Gore*, U.S.. No. 00-949, 12/12/00) Page 4029.

B. Proceedings below

Petitioner filed suit against the Wise County Bail Bond Board for denying the Petitioner a hearing of his application for an agent's license to sell bail bonds for a licensed bail bondsman in Wise County, Texas.

At the time of the denial, the Texas Bail Bond Act (Art. 2372p-3 which regulates **only 35** of the **254** counties in the State of Texas) provided no licensing regulations for employees or agents.

However the Wise County Bail Bond Board enacted their own "local rules" that provided that " a person is not eligible for an agents license if, after August 27, 1973, the person has been finally convicted of a misdemeanor involving moral turpitude or of a felony.

The Petitioner was convicted of felony theft in 1974 and felony DWI in 1992, a crime not involving moral turpitude.

The Petitioner is, however, a licensed bondsman in Hood County, Texas under the authority of the County Sheriff and the Code of Criminal Procedure Chap.17 Art.17.10. Hood County is not regulated by a County Bail Bond Board under Art 2372p-3(Now The Texas Occupation Code 1704).

The Petitioner was first denied **Due Process** by the Wise County Bail Bond Board when the Board refused to hear the Petitioner's application for licensure as an agent for a licensed bail bondsman.

The Petitioner was further denied **Equal Protection** granted to other persons operating as sureties in 229 other counties in the State of Texas who operate under: **(1) CCP. Chapter 17 Art. 17.10; and (2) Art. 21.07 of the Texas Insurance Code**

and; (3) Rule IV, Rules Governing Admission to the Bar, as will be further discussed below.

The Petitioner was once again denied Due Process and Equal Protection by the District Court which denied the Petitioner a hearing of his application by Trial De Novo as prescribed by T.O.C. 1704.256 when the court granted the Respondent a Summary Judgment of which the Petitioner appealed to the Second Court of Appeals of Texas. The Second Court of Appeals ruled that the Board's local rule was not unConstitutional. The Texas Supreme Court then denied the Petitioner's petition for review and subsequently denied the Petitioner a rehearing. The Petitioner clearly raised the constitutionality of the Board's local rule 19c and §1704.154 of T.O.C. as evidenced by the Second Court of Appeals ruling on the same.

NEITHER THE WISE COUNTY BAIL BOND BOARD; NOR THE DISTRICT COURT; NOR THE 2ND COURT OF APPEALS EVER ACKNOWLEDGED OR ADDRESSED THE PETITIONER'S COMPLAINT ABOUT THE VIOLATION OF EQUAL PROTECTION THAT EXISTED AMONG THE STANDARD-LESS (4) LICENSING SCHEMES REGULATING BAIL BOND SURETIES IN THE STATE OF TEXAS.

4 LICENSING SCHEMES THAT COLLECTIVELY REGULATE THE SURETY BUSINESS IN THE STATE OF TEXAS, EACH OF WHICH PROVIDE A *DIFFERENT CONSEQUENCE* OF A CRIMINAL CONVICTION

1. Sureties Licensed under 1704 of the Texas Occupation Code- Pursuant to Sec. 1704.153, a person is ineligible for licensure and is **barred forever** if that person has ever been convicted of **any** felony or any crime involving moral

turpitude after August 27,1973. This code provision is applicable to only **35** counties in the state that are mandated by law to have a bail bond board. Rehabilitation or a hearing to determine a persons "present moral fitness" can not be considered under this **permanent** statutory bar from licensure, unlike the statutory **5-year** bar from licensure for insurance agents; and the **5-year** statutory bar from licensure for attorney's, **a standard of which the Texas Supreme Court set itself to regulate Attorney's.**

2. Persons licensed under the authority of the C.C.P. Chapter 17- any person over the age of 18 may qualify as a surety (Art. 17.10), subject to the collateral requirements to be approved by the County Sheriff. C.C.P. Chapter 17 is applicable to **229** of the **254** counties in the State that are "non-bail bond board" counties. A person with a criminal conviction is not statutorily barred from acting as a surety in these **229** counties.

3. Licensed Insurance agents- Local Recording Agents are authorized to write bail bonds for Corporate sureties in all **254** counties of the State. Pursuant to Art. 21.07 Sec. 10A of the Texas Insurance Code, a person convicted of a felony **involving moral turpitude** is ineligible for licensure for a period of **5 years** following a criminal conviction but may **reapply** to the Commissioner for re-licensure pursuant to the provisions of the Texas Occupation Code, set in **Chapter 53, Consequences of Criminal Conviction,** following the **5-year** period.

It is curious to note that Texas Occupation Code Chapter 1704 applies to only 35 of the 254 counties, but Chapter 53 (Consequences of a Criminal Conviction) of the Texas Occupation Code does not apply to Sureties licensed under Chapter 1704.

However, Chapter 53 does apply to agents licensed under the Texas Insurance Code Art. 21.07 who are not licensed under the Texas Occupation Code! Furthermore,

licensed attorneys are exempt from both Chapter 1704 and Chapter 53 of the Texas Occupation Code, and the Texas Insurance Code, but are rather licensed and regulated solely by the Supreme Court of Texas.

4. Attorney's Licensed by the Supreme Court- Pursuant to T.O.C. 1704.163, an attorney licensed to practice law in the State of Texas, and who represents the person for whom the bond is made, may execute a bond in any county in the state, and are **exempt** from the licensing provisions of Chapter 1704 of the T.O.C. Pursuant to Rule IV, Rules Governing Admission to the Bar, an attorney who has been convicted of a felony is eligible for re-licensure after **5 years** following the conviction, at the **discretion** of the **Supreme Court**.

The very Court (**The Supreme Court of Texas**) that **refused** to review the Petitioner's case herein clearly set the standard for consequences of a criminal conviction for whom they license to practice law in the State of Texas. That standard was a **5 year *suspension*** of licensure after which time an attorney is **eligible** to reapply for licensure.

ANALYSIS

The State of Texas simply does not have a State Licensing Statute applicable to **all persons** acting as sureties. The Petitioner, and the occupation itself, is treated differently in one county as opposed to his treatment, or how the occupation is regulated in other counties of the same State.

The Petitioner is treated differently under 1704 than attorney's simply because they are exempt from being licensed under 1704. The Petitioner in fact operates a surety business in 2 counties that is not regulated under 1704, but rather under the Code of Criminal Procedure and the County Sheriff. Under the unconstitutional restrictions imposed under 1704, the Petitioner can not expand his surety business to more lucrative counties that have a larger population since the Legislature requires all counties with a population of more than 110,000

to have a bail bond board. Although the Petitioner may in fact operate a surety business in 229 counties, these counties are more sparsely populated than the more lucrative counties of a 110,000 people or more.

Clearly the Petitioner has been discriminated against because he does not have the freedom to practice his chosen occupation in more lucrative markets as do others.

"Discriminations which are open to objections are those where persons engaged in the **same** business are subject to **different restrictions**, or are entitled to different privileges under same conditions..." **Soon Hing v. Crowley** (1885) 113 US 703, 28 1 Ed 1145, 5 S Ct. 730.

The same conditions are that: **the requisites for a bail bond under Art. 17.08 CCP are the same for all sureties in all 254 counties in the State of Texas.**

There is absolutely no fundamental difference for a person acting as a surety in one county as opposed to another county. The Petitioner may lawfully act as a surety in **229** counties, but is **permanently barred** from licensure in the other **35**counties regulated under 1704, wherein the same **identical statutory *requisites*** of a bail bond apply, with the only difference being a county line. It is abundantly clear that a person who has a criminal conviction suffers a much harsher consequence of that conviction if that person desires to be in the surety business in any of the 35 more lucrative bail bond board counties- *or a person who is not a licensed attorney or a licensed insurance agent.* Unquestionably there is an unconstitutional disparity between the licensing restrictions as a consequence of a criminal conviction among the 4 licensing schemes in different counties within the same state.

"The **liberty interest** right to engage in any of common occupations of life is protected in more than the initial

allocation of the franchise" ***Board of Regents v. Roth*** 408 U.S. 572 S Ct.

"Equal Protection applies as well to the manner of it's exercise", ***George W Bush, et al V. Albert Gore Jr., et al, supra.***

In the 2000 Presidential election, the Supreme Court of the United States ruled that:

"... the use of ***standard-less*** manual recounts **violates the Equal Protection** and Due Process Clause's".

" With respect to the equal protection question, we find a violation of the Equal Protection"... "...the standards for accepting or rejecting contested ballots might ***vary*** not only from ***county to county*** but indeed within a single county" ..."...this is not a process with sufficient guarantees of ***equal treatment*** ".. "..each of the counties used varying standards to determine what was a legal vote. Broward County used a more ***forgiving standard*** than Palm Beach County... A result markedly disproportionate to the ***difference in population between the counties.***"

In considering the Florida Supreme Court's ruling to recount the ballots, the United States Supreme Court ruled that:

"... there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied, and it would require...**adequate** ***Statewide Standards*** for determining what is a legal vote".

Without question, the **standard of consequences of a criminal conviction** applicable to persons acting as sureties in the State of Texas not only ***vary*** from one licensing scheme to another, but also ***vary*** from one county to another county, while all persons acting as sureties in all 254 counties are subject to the identical requisites of a bail bond under Art. 17.08 of the Texas Criminal Code of Procedure. The Petitioner's complaint of violation of Equal Protection is

fundamentally no different than the complaint raised in ***Bush v. Gore.*** The Supreme Court of the United States ruled that there was not a process with sufficient guarantees of equal treatment of each voter.

Likewise there is not a ***State standard*** of consequences of a criminal conviction imposed on persons engaged in the surety business with sufficient guarantees of equal treatment of all persons in the ***same county*** **under different licensing schemes, *or from county to county* under different licensing schemes.**

Notwithstanding the totally bizarre disparity and disenfranchisement among the varying licensing schemes, and the application of each licensing scheme from county to county, regulating the surety business in Texas, the violation of equal protection is punctuated even more when considering the **special forgiveness** afforded to attorney's, licensed and disciplined by the **Supreme Court of Texas**. The Legislature has conveniently **exempted** attorneys from:

(1) The Texas Occupation Code Chapter 53 (consequences of a criminal conviction);

(2) The Texas Occupation Code 1704 (licensed sureties in 35 bail bond board counties) and;

(3) The Texas Insurance Code (attorney's are exempted from licensure to sell insurance).

Notably the Texas Supreme Court and the Legislature, are principally composed of attorneys who not only enact the laws but also sit on the highest court of the State. These very people who have enacted laws, as well as interpret the laws, that disenfranchise others have cleverly exempted themselves from the standards they have set on all the rest of the people in the State. It is really no wonder that the Texas Supreme Court refused to hear the Petitioner's Petition for Review, as it plainly criticized the role that the Supreme Court plays in regulating attorneys.

Simply put, the Petitioner criticized the Second Court of Appeals and the Texas Supreme Court for interpreting the laws that would somehow allow attorneys to have a **miraculous rehabilitation** of their moral fitness following **5 years** of a conviction, whereas the Petitioner and many other citizens in the State, in many occupations, can never be rehabilitated *enough* due to the **higher moral standards** the **legislature** (attorneys) have **set on everyone else**, including those engaged in the same surety business.

SECOND COURT OF APPEALS OPINION AND WHY THEY WERE WRONG

Under 4 Points of Error under review, the Second Court of Appeals correctly reversed 3 of the Lower Courts rulings. However, the Appellate Court failed to properly interpret ***Smith v. Fussenich*** 440 F. Supp. 1077,1082 (D. Conn. 1977) when they ruled that ***Dixon v. McMullen,*** 527 F. Supp. 711,720 (N.D. Tex. 1981) had superceded ***Smith.***

Dixon v. McMullen concerned the licensing of a *peace officer* - **a government employee.**

Smith v. Fussenich concerned the licensing of a security guard - a **non-governmental occupation** of which does not involve law enforcement or the carrying of a firearm.

Throughout the Board's entire pleadings the Board constantly claimed that sureties functioned like peace officers. A proposition that even the Appellate Court did not support. However, the Courts rationalization of ***Dixon*** to ***Smith*** is somewhat misplaced. Regardless, bail bond sureties in the State of Texas have absolutely no arrest powers, nor do insurance agents, nor do attorneys who operate in the same business.

The Appellate Court has globally asserted that if it is constitutional to ban ex-felons from certification as peace officers then it is constitutional for any licensing agency to ban

all ex-felons from any employment , and it is on the burden of the applicant to prove why it is unconstitutional.

However the Petitioner clearly argued that Rule 19(c) and 1704.153 **"impermissibly interfered with his exercise of a fundamental right of employment** "***Kramer v. Union Free School District*** 395 U.S. 621,89 S Ct. 1886, 23 l Ed 583 (1969-(vote); ***Shapiro v. Thompson,*** 394 U.S. 618, 89 S Ct. 1322, 22 L Ed. 600 (1969); ***Smith v. Fussenich*** 440 F. Supp at 1078, and that the rule/statute infringed on his **constitutional right of a liberty interest right to engage in a common occupation of life,** ***Orr v. Trinter*** 444 F. 2D at 133.- an occupation other than government employment.

The Appellate Court failed to draw any distinction between government employment and non-government employment when considering the constitutionality issue and erred by relying on ***Dixon.***

Finally at page 11 of the Appellate Court's Opinion the Court states:" We hold rule 19(c) to be constitutionally tailored to promote the state's interest in eliminating corruption in the bail bond profession". However, neither the Respondent, nor the Lower Court, nor the Appellate Court ever cite any legislative history to support the Appellate Court's claim of prior" corruption" in the bail bond business. This claim is totally without merit. To allow the Appellate Court's opinion to hold, would clearly allow any licensing authority to make such an unfounded overbreadth claim without justification , reason, or **evidence.**

Clearly as evidenced by the copy of the Second Court of Appeals Opinion appendixed herein, the Second Court of Appeals District of Texas:

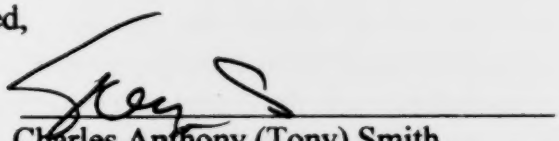
NEVER ADDRESSED THE PETITIONER'S COMPLAINT OF VIOLATION OF EQUAL PROTECTION AMONG THE 4 LICENSING SCHEMES REGULATING THE SURETY BUSINESS IN THE STATE OF TEXAS.

THE PETITIONER'S COMPLAINT WAS TOTALLY IGNORED AND UNANSWERED BY THE DISTRICT COURT, THE SECOND COURT OF APPEALS, AND THE SUPREME COURT OF TEXAS.

CONCLUSION

The Second Court of Appeals District of Texas clearly misinterpreted the Constitution under the 14th Amendments under Due Process and Equal Protection. The Court further **failed** to **acknowledge, discuss** or **offer an opinion** in regard to the **violation of equal protection** among the 4 standard-less licensing schemes regulating the surety business in the State of Texas and Writ of Certiorari should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that 3 true and correct copies of the Petitioner's application for Writ of Certiorari has been forwarded by first class mail to all counsel of record listed below on April 23, 2002, and that 3 true and correct copies of Petitioner's reformatted application for Writ of Certiorari has been forwarded by first class mail to all counsel of record listed below on June 25, 2002.

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APPENDIX

Judgment of the Trial Court

Opinion of the Second Court of Appeals

Petition For Review denied by the Supreme Court

Motion for Rehearing denied by Supreme Court

4 Licensing Statutes Regulating Sureties

#1. Texas Occupation Code:

a. Chapter 1704.051 Mandatory creation of Board
b. Chapter 1704.053 Ineligibility Because of a Conviction
c. Chapter 53. Consequences of Criminal Conviction (not Applicable to sureties licensed under Chapter 1704.)
(Applicable to 35 of 254 Counties)

#2. Texas Code of Criminal Procedure Art. 17.10 Disqualified Sureties
(Applicable to 229 of 254 Counties)

#3. Rules Governing Admission to the Bar (Attorney bonds)
(Applicable to all 254 Counties)

#4. Art. 21.07 Agents Licensing , State Board of Insurance (applicable to 229 of 254 Counties) Although a person is eligible for licensure as a local recording agent **5** years following a conviction, that person is barred forever from becoming a corporate licensed surety , or agent of a licensed corporate surety in the **35** bail bond board Counties.

Rule 19(c) Wise County Bail Bond Board

CASE NO. 00-01-049

CHARLES ANTHONY (TONY SMITH) * DISTRICT CT.
Plaintiff,
v. * WISE CO.TX.
WISE COUNTY BAIL BOND BOARD
Defendant * 271st JUD DIST.

FINAL SUMMARY JUDGMENT

On the 7th day of May, 2000, came on for hearing the Plaintiff's Motion for Summary Judgment and the Defendant's Motion for Summary Judgment. The Court considered the cross-motions based upon written submissions only, without oral arguments.

Having considered the motions, summary judgment evidence admitted and the legal authorities cited, the court finds:

1. That the Wise County Bail Bond Board Rule 19(c) is not unconstitutional;

2. That Plaintiff has abandoned his claims under the Texas Occupation Code, Section 1704.255(a);

3. That Plaintiff's claims are barred under the doctrine of res judicata;

4. That Plaintiff lacked standing to bring suit for the reason that suit was filed before the time the Wise County Bail Bond Board denied the application.

Therefore, the Plaintiff's Motion for Summary Judgment is denied, and the Defendant's Motion for Summary Judgment is granted.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff take nothing and that Defendant go hence without day.

All costs of court are taxed against Plaintiff.
All relief requested which is not herein granted is hereby denied.

SIGNED This 12TH Day Of July, 2000.

_____

JUDGE JEFF WALKER,
JUDGE OF THE 96TH DISTRICT COURT SITTING
ON ASSIGNMENT IN THE 271ST DISTRICT COURT

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-00-00318-CV

CHARLES ANTHONY (TONY) SMITH — APPELLANT

V.

WISE COUNTY BAIL BOND BOARD — APPELLEE

FROM THE 271ST DISTRICT COURT OF WISE COUNTY

OPINION

INTRODUCTION

Charles Anthony (Tony) Smith appeals from the trial court's grant of summary judgment to the Wise County Bail Bond Board (Board) and denial of his motion for summary judgment. Smith appeals the Board's denial of his application for a bail bond agent's license complaining that the Board's local rule 19(c) was unconstitutional. Upon cross-motions for summary judgment, the trial court ruled in favor of the Board, We affirm trial court's judgment.

BACKROUND

The Bail Bond Act authorizes bail bond board's to create rules to implement the Act. TEX. OCC. CODE ANN. §1704.101(4) (VERNON 2001); *Smith v. Tarrant County Bail Bond Board*, 997 S.W. 2d 870, 871 (Tex. App.-Fort Worth 1999, pet. Denied). In accordance with the Bail Bond Act, the Board created such rules. Rule 19(c) prohibits any person

convicted of a felony or misdemeanor involving moral turpitude after August 27, 1973 from being licensed as a class "A" or class "B" agent. A class "A" agent meets and negotiates with members of the public for the purpose of selling bail bonds and presents bonds to the Sheriff's Department for approval.

On December 7, 1999, appellant applied to the Board for a Class "A" agent's license. On December 14, 1999, the Board tabled his application to await the outcome of pending litigation.[1] On January 20, 2000, appellant filed suit against the Board for refusing to rule on his application. Appellant claimed that the Board's refusal to immediately rule on his application was the "functional equivalent" of denying it. On February 24, 2000, the Board denied appellant's application for a Class "A" agent's license.

In March, appellant filed a motion for summary judgment. The Board then filed a cross-motion for summary judgment, and appellant subsequently amended his original petition. Appellant claimed rule 19(c) was unconstitutional because it violated his due process rights and equal protection rights made applicable to the states by the Fourteenth Amendment of the Federal Constitution. U.S. CONST. Amend XIV. The Board argued that rule 19(c) was constitutional because it was rationally related to a legitimate state interest. Additionally, the Board argued that appellant's claim was barred by res judicata, that he lacked standing, and that he failed to state a claim. The trial court granted the Board's motion for summary judgment and denied appellant's motion for summary judgment. In it's final summary judgment order the trial court held that: (1) rule 19(c) was not unconstitutional; (2) appellant abandoned his claims; (3) appellant's claims were barred by res judicata; and (4) appellant lacked standing to bring suit

---

[1] The pending litigation was appellant's appeal from a previous suit against the Board where it denied his application for a bail bondsman's license. See Smith v. Wise County Bail Bond Bd., 995 S.W. 2d 881 (Tex. App.- Fort Worth 1999, pet. Denied).

because he filed his petition before the board denied his application.

Points

Appellant raises five points on appeal. He complains that the trial court erred in granting summary judgment to the board and in denying his motion for summary judgment because: (1) rule 19(c) is unconstitutional; (2) his claims were not barred by res judicata or lack of standing; (3) he did not abandon his claims and (4) standing, res judicata, and abandonment were matters irrelevant to his appeal. Appellant submits his brief pro se and attempts to meet the requisites of rule 38.1 TEX. R. APP. P. 1. However, his brief lacks record references, most significantly in the statement of facts. *Id.* At 38.1(f). Also, his arguments are scattered and disorganized, as opposed to being clear and concise. *Id.* At 38.1(h). Further, some of his arguments do not conform with the corresponding point statements, and at times randomly appear in different sections of the brief. Finally, many of his contentions lack citations to authority. *Id.* However courts of appeals liberally construe the briefing rules, so we address the discernable arguments.

DISCUSSION

When a bail bond board denies a license, the Act provides for appeal by trial de novo to the district court. Harris County Bail Bond Board v. Burns, 881 S.W. 61,62 (Tex. App.- Houston [14th Dist.] 1994, writ denied) (op. on reh'g). De novo authority vests a court with full power to determine the issues and rights of all parties and to try the case as if it had been filed originally in that court. *Id.*

Where an appellant from a summary judgment does not successfully attack every possible ground upon which the district court based its summary judgment, the summary judgment must be affirmed. *Grace v. Colorito*, 4 S.W. 3d 765, 768(Tex. App.-Austin 1999, pet. Denied). Accordingly, if any of the grounds the trial court specified for granting the

summary judgment are meritorious we will affirm. *Id.*

Because we do not need to address appellant's constitutional complaints unless his other points are sustained, we begin by addressing points two, three, four and five.

Abandoned Claims

In appellant's second point, he complains that the trial court erred in granting summary judgment to the Board on the ground that he abandoned his claim. We agree with appellant. A summary judgment cannot be affirmed on a ground not specifically presented in the motion for summary judgment. *Travis v. City of Mesquite,* 830 S.W. 2d 94, 100 (Tex. APP. 1992) (op. on reh'g). One of the grounds for granting summary judgment to the Board was Appellant's abandonment of his claim under section 1704.255(a) of the Occupation Code. However, the Board did not raise this ground in their motion for summary judgment. Therefore, the trial court erred in granting summary judgment on abandonment. We sustain appellant's second point.

Res Judicata

In Appellant's third point, he complains that the trial court erred in granting summary judgment to the board on the ground that his claims were barred by res judicata. We agree. Res judicata bars relitigation of claims that have finally been adjudicated, or that arise out of the same subject matter and that could have been litigated in the prior action. *Amstadt v. U.S. Brass Corp.,* 919 S.W. 2d, 644, 652 (Tex. 1996). It requires proof of the following elements: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *Id.*

Appellant's present suit is not barred by res judicata because it involves a different claim. In his prior suit, appellant complained of the board's denial of his application for a

bail *bondsman's* license[2]. See *Smith*, 995 S.W. 2d 881. Now he complains of the Board's denial of his application for a bail bond agent's license under rule 19(c) of the Board's local rules and regulation of the Wise County Bail Bond Board. Although the two complaints involve similar regulations[3], they are separate and distinct suits that do not raise out of the same subject matter. Appellant could not have raised his challenge to rule 19(c) on his previous litigation because it was not relevant to that suit. Furthermore, he now challenges the constitutionality of rule 19(c), a complaint not litigated in his prior suit.[4] Therefore, the trial court erred in granting summary judgment on the ground that appellant's claims were barred by res judicata. We sustain appellant's third point.

Standing

In appellant's forth point, he complains that the trial court erred in granting summary judgment to the Board on the ground that he lacked standing to bring his suit because he filed suit before the Board denied his application. We agree with appellant. Appellant had standing to appeal because prematurely filed challenges are often treated as timely filed. Bolduc v. Nat'l Union Fire Ins. Co. 839 S.W. 2d, 154 (Tex. App.- Houston [1st Dist.] 1992, no writ). In these instances, potential jurisdiction of a trial court, in which an appellant

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[2] Appellant complained of Texas Revised Civil Statute article 2372p-3 section 3(c) . Act. Of MAY 29, 1981, 67TH Leg. R.S. CH. 312, §3(c), 1981 Tex. Gen. Laws 875,876, repealed by Act of May 13, 1999, 76th Leg., R.S., CH. 388, §6(a), 1999 Tex. Gen Laws 1431, 2439-40 (Current version at TEX. OCC. CODE ANN. § 1704.153 (Vernon 2001).

[3] Rule 19 (c) (bail bond agent) and section 1704.153 (bail bondsman) both prohibit a person convicted of a felony or misdemeanor involving moral turpitude after August 27, 1973 from receiving a license for the corresponding occupations. TEX. OCC. CODE ANN. § 1704.153.

[4] In his prior suit, appellant attempted to challenge the constitutionality of article 2372p-3, §3(c) but, this court dismissed his point because he failed to properly raise the complaint in his brief.

prematurely files suit, vests following the expiration of the appropriate time period events. *Id.* Jurisdiction vested with the district court on February 24, 2000 when the Board denied appellant's application, and before the parties filed motions for summary judgment. See TEX. OCC. CODE ANN. § 1704.255(a). Therefore, we consider appellant's petition timely filed on that date. We sustain appellant's forth point.

Equal Protection

In appellant's first point, he complains that the trial court erred in granting summary judgment to the Board and denying his motion for summary judgment because, as a matter of law, rule 19(c) is unconstitutional. U.S. CONST. Amend. XIV.

Equal protection does not mean that a statute must treat all persons identically. Williams v. Taylor, 677 F. 2d 510, 516 (5th Cir. 1982). But it does demand that when the state draws distinctions between similarly situated persons the distinction must be rational, not arbitrary. *Id.* With regard to occupational licensing, the Supreme Court formulated a test that requires any qualification " only 'have a rational connection' with the applicant's fitness or capacity' to perform the job." *Dixon v. McMullen*, 527 F. Supp. 711, 720 (N.D. Tex. 1981) (quoting *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232,239, 77 s. Ct. 752, 756 (1957). "[A] state may regulate professions which affect the public interest as long as the regulation rationally furthers a legitimate state interest or purpose." *Dixon* , 527 F. Supp. At 720. Under the rational basis scrutiny, a statute is presumed constitutional. *Heller v. Doe,* 509 U.S. 312, 320 113 S. Ct. 2637, 2643 (1993). The state has no obligation to produce evidence to sustain the rationality of a statutory classification. *Id.* The burden is on the party attacking the legislation to rebut the presumption of constitutionality by showing that the statute is not rationally related to a legitimate state interest. *Id. Upjohn Co. v. Rylander*, 38 S.W. 3d. 600,610 (Tex. App.- Austin 2000, pet. Denied).

Appellant fails to argue that rule 19(c) is not rationally

related to a legitimate state interest. Instead, appellant focuses on pointing out the weaknesses of the Board's arguments. He points to one case. *Smith v. Fussenich,* where a Connecticut federal court held an overbroad statute unconstitutional because it banned persons convicted of felonies and crimes involving moral turpitude from working as security guards or private investigators. *Smith v. Fussenich*, 440 F. Supp. 1077,1082 (D. Conn. 1977). We decline to follow *Fussenich* because a federal district court in Texas has since held that a similar statute prohibiting ex-felons from certification as police officers is constitutional. *Dixon*, 527 F. Supp. 720. In *Dixon,* the court determined that banning all ex-felons from becoming police officers, without considering the nature of the crime of the underlying conviction, was not overbroad even though it could potentially exclude otherwise acceptable candidates.

The Board argues, citing session law of the Bail Bond Act, prohibiting persons convicted of felonies and misdemeanors involving moral turpitude from being licensed bail bond agents rationally relates to the state's interest in preserving and implementing the right of bail through " just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused." Act of May 18, 1973, 63rd Leg., R.S. ch. 550, § 1, 1973 Tex. Gen. Laws 1520, 1520, repealed by act of May 13, 1999, 76th leg. R.S., ch. 388, § 6(a), 1999 Tex. Gen. Laws 1431, 2439-40. We agree with the Board. The bail bond business affects the public interest. Here, appellant applied for a bail bond agent's license. This entails negotiating for the sale of bail bonds to produce the release of persons accused of crimes. An agent's discretion in assisting in the bonding of an accused can have an impact on the public should the accused be freed on bond. It is in the state and publics interest to limit who can be an agent, and it is rational to do so by drawing the line between criminals and law abiding persons. We hold that rule 19 (c) to be constitutionally tailored to promote the state's interest in

eliminating corruption in the bail bond profession. Because the Board has shown that the rule 19(c) is rationally related to a legitimate state interest, and the appellant has failed to prove the alternative, we hold the rule does not violate appellant's Fourteenth Amendment right to equal protection. We overrule appellant's first point.

_Appellant also mentions in various parts of the brief that he did not get a hearing on his application or written notice of the Board's decision in accordance with the bail bond act. *See* Tex. Occ. Code Ann. §§ 1704.157-159. However, this point is not properly raised in a statement, nor is it adequately briefed.[5] Appellant' sprinkles this argument within several points of his brief, but never raises or argues it independently. We dismiss this argument as inadequately briefed. See TEX. R. APP. P. 38.1(e), (h).

Conclusion

Although we sustain appellant's second, third, and forth points, we overrule his first point complaining that rule 19(c) was unconstitutional.

Because appellant has not shown that each ground for granting the Board's motion for summary judgment was erroneous, we hold that the trial court did not err in granting the Board's motion for summary judgment.

TERRY LIVINGSTON
JUSTICE

PANEL B: LIVINSTON,DAUPHINOT and WALKER,JJ.
DO NOT PUBLISH
TEX. R. APP. P. 47. 3(a)
July 12, 2001

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[5] Appellant's first point that rule 19(c) is unconstitutional does not include his complaint that he did not receive a fair hearing or written notice under the Bail Bond Act. Further, complaining that the Board failed to follow the procedure of the Act does not make that Act's provisions unconstitutional.

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711

(512) 463-1312

October 25, 2001

Mr. S. Cass Weiland
Patton Boggs LLP
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201-8001

RE: Case Number 01-0780
Court of Appeals Number: 02-00-00318-CV
Trial Number: 00-01-049

Style: CHARLES ANTHONY SMITH a/k/a/ TONY SMITH
v.
WISE COUNTY BAIL BOND BOARD

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,

John T. Adams

By_____
Tanya R. Hunter, Deputy Clerk

cc: Ms. Stephanie Lavake, Clerk
Ms. Lawana Snider
Mr. Charles Anthony Smith

THE SUPREME COURT OF TEXAS
Post Office Box 122248
Austin, Texas 78711

(512) 463-1312

January 24,2002

Mr. S. Cass Weiland
Patton Boggs LLP
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201-8001

Re: Case Number: 01-0780
Court of Appeals Number: 02-00-00318CV
Trial Court Number 00-01-049

Style: CHARLES ANTHONY SMITH a/k/a TONY SMITH
v.
WISE COUNTY BAIL BOND BOARD

Dear Counsel:

Today, the Supreme Court of Texas denied the motion for rehearing of the above styled petition for review.

Sincerely,
John T. Adams

By_____
Blanca E. Morin, Deputy

cc: Ms. Stephanie Lavake, Clerk
Ms. Lawanda Snider
Mr. Charles Anthony Smith

CONSEQUENCE OF CRIMINAL CONVICTION UNDER TEXAS LICENSING SCHEME # 1

Texas Occupations Code - CHAPTER 1704
Bail Bond Sureties

§ 1704.153 Ineligibility Because of Criminal Conviction

"A person is not eligible for a license under this chapter if, after August 27,1973, the person commits and is finally convicted of a misdemeanor involving moral turpitude or a felony."

§1704.002 Application of Chapter

This chapter applies only in a county with a population of:

(1) 110,000 or more people.

(2) less than 110,000 in which a board is created.

(this chapter of the T.O.C. is applicable to only 35 of 254 counties in the State of Texas that have a Bail Bond Board- counties with a population of over 110,000 people or where a board was created)

CONSEQUENCE OF CRIMINAL CONVICTION UNDER TEXAS LICENSING SCHEME #2

Texas Code of Criminal Procedure Chapter 17. Bail Arts. 1709-17.11

ART. 17.10. DISQULIFIED SURETIES

"A minor cannot be surety on a bail bond, but the accused party may sign as principal".

*(this chapter of the Criminal Code of Procedure is applicable to 229 of the 254 Counties in the State of Texas that do not have a Bail Bond Board). There is **no consequence** of a criminal conviction under this chapter.*

CONSEQUENCE OF CRIMINAL CONVICTION UNDER LICENSING SCHEME #3

Texas Insurance Code

AGENTS AND AGENTS LICENSES Art. 21.01

Ineligibility based on felony conviction

Sec. 10A. (a) Except as provided by subsection (c) of this section , the department may not issue a license to act as an insurance agent if the applicant has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(b) The department may, after notice and hearing revoke the license of an insurance agent if the agent is convicted of a felony involving moral turpitude or breach of a fiduciary duty.

(c) A person whose application for issuance of a license to act as an insurance agent has been denied under subsection (a) of this section or whose license has been revoked under Subsection (b) of this section may petition the commissioner for issuance or reinstate of the license.

(d) A petition for issuance or reinstatement of a license may not be made before the date **five years** after the date of final conviction...

(*this chapter of the Texas Insurance Code is not applicable to Sureties or their agents licensed under T.O.C. 1704. in the 35 Bail Bond Board Counties - but is applicable to agents of corporate sureties in the other 229 counties)*

CONSEQUENCE OF A CRIMINAL CONVICTION UNDER LICENSING SCHEME # 4 (Attorneys)

RULES GOVERNING ADMISSION TO THE STATE BAR OF TEXAS Rule 4

RULE 1V. GOOD MORAL CHARACTER AND FITNESS REQUIRMENT

(d)(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good moral character and fitness and shall not be permitted to file a Declaration of Intention to study law or an application for a period of **five years** after the completion of the sentence and / or probation.

(f) An individual who applies for admission to practice law in Texas or who files a petition for redetermination of present moral character and fitness after the expiration of the **five-year** period required under subchapter (d)(2) above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (e) above shall be required to prove, by preponderance of the evidence:

(1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice law;

(2) that (s)he is of present good moral character and fitness; and

(3) that during the **five years** immediately preceding the present action, s(he) has been living a life of exemplary conduct.

*(attorneys are permitted to post bail bonds in all **254** counties subject to the approval of the county sheriff and are **exempt from licensure** under the Texas Occupation Code 1704.163 in the **35** bail bond board counties).*

LOCAL RULES OF THE
WISE COUNTY BAIL BOND BOARD

Rule 19 (c) Wise County Bail Bond Board

The Bail Bond Board will not license as either a Class A or Class B agent, any person who, after August 27, 1973, commits or has committed an offense being a felony or a misdemeanor involving moral turpitude if such offense has resulted in a final conviction or for which charges are currently pending.

(note: not all bail bond boards have adopted a local rule providing a permanent bar from employment as an agent as a consequence of a felony conviction. Some boards such as the Parker County Bail Bond Board provide for a 10-year bar from employment as a consequence of conviction, whereas the McLennon County Bail Bond Board does not allow bondsmen to have any agents at all, and yet they do permit Attorneys who make bail bonds to have agents - inopposite of most of the 35 county bail bond board's local rules that do not permit Attorneys to have agents. There is no consistency or equal protection even among the 35 county bail bond boards who have already enacted an unconstitutional local rule).

CONSEQUENCE OF A CRIMINAL CONVICTION UNDER CHAPTER 53 TEXAS OCCUPATION CODE

SUBCHAPTER A. GENERAL PROVISIONS

§53.002 Applicability of Chapter

This chapter **does not apply** to:

(1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department;

(2) a peace officer or an applicant for a peace officer described by Article 2.12, Code of Criminal Procedure;

SUBCHAPTER B. INELIGIBILITY FOR LICENSE

§53.021. Authority to Revoke, Suspend, or Deny License

(a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§53.022 Factors In Determining Whether Conviction Relates to Occupation

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to

engage further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

§53.023. Additional Factors for Licensing Authorities to Consider

(a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested or had custodial responsibility for the person;

(B) the sheriff or chief of police on the community where the person resides; and

(C) any other person in contact with the convicted person.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

(1) maintained a record of steady employment;

(2) supported the applicant's dependants;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Prior laws:

Acts 1981, 67th Leg., p. 695,ch 267, § 1.

Vernon's Ann. Civ. St. art. 6252-13c, § 4(c) .

(Chapter 53. of the Texas Occupation Code does apply to Insurance Agents acting on behalf of Corporate Sureties in 229 non-bail bond board counties. It does not apply to sureties or their agents in the 35 bail bond board counties do to the provisions under Chapter 1704. of the Texas Occupation Code § 1704.053.)